

SPECIAL MEETING A G E N D A
CITY OF AZTEC
CITY COMMISSION MEETING
December 18, 2014
201 W. Chaco, City Hall
5:30 p.m.

- I. **CALL TO ORDER**
- II. **INVOCATION**
- III. **PLEDGE OF ALLEGIANCE**
- IV. **ROLL CALL**
- V. **AGENDA APPROVAL**
- VI. **CITIZEN RECOGNITION**
- VII. **EMPLOYEE RECOGNITION**
- VIII. **CONSENT AGENDA**

- A. Bid 2015-462 Lightplant Sewer Tap(Kathy)
- B. Bid 2015-463 Pedestrian Bridge Lights(Kathy)
- C. State Grant Agreement for Airport Projects (Josh)
- D. Investment Tax Credit Resolution 2014-947(Bil)

Items placed on the Consent Agenda will be voted on with one motion. If any item proposed does not meet the approval of all Commissioners, a Commissioner may request that the item be heard under "Items from Consent Agenda"

- IX. **ITEMS FROM CONSENT AGENDA**

ATTENTION PERSONS WITH DISABILITIES: The meeting room and facilities are fully accessible to persons with mobility disabilities. If you plan to attend the meeting and will need an auxiliary aid or service, please contact the City Clerk's Office at 334-7600 prior to the meeting so that arrangements can be made.

Note: A final agenda will be posted 24 hours prior to the meeting. Copies of the agenda may be obtained from City Hall, 201 W. Chaco, Aztec, NM 87410

X. CITIZENS INPUT (3 Minutes Maximum)

(Citizens who wish to speak will sign up prior to the meeting – this section is for items not otherwise listed on the agenda)

XI. BUSINESS ITEMS

- A. Final Approval of Loan Ordinance 2014-441 Amending Ordinance 2013-423 Authorizing City of Aztec New Mexico Loan Agreement with New Mexico Environment Department Clean Water State Revolving Fund, Wastewater Interceptor Line

XII. LAND USE HEARING

XIII. CITY MANAGER/COMMISSIONERS/ATTORNEY REPORTS

XIV. DEPARTMENT REPORTS

(When this item is announced, all Department Heads who wish to give a report will move to the podium)

XV. ADJOURNMENT

ATTENTION PERSONS WITH DISABILITIES: The meeting room and facilities are fully accessible to persons with mobility disabilities. If you plan to attend the meeting and will need an auxiliary aid or service, please contact the City Clerk's Office at 334-7600 prior to the meeting so that arrangements can be made.

Note: A final agenda will be posted 24 hours prior to the meeting. Copies of the agenda may be obtained from City Hall, 201 W. Chaco, Aztec, NM 87410

Staff Summary Report

MEETING DATE:	December 18, 2014
AGENDA ITEM:	VIII. CONSENT (A)
AGENDA TITLE:	<u>Bid 15-0462 Lightplant Sewer Tap</u>

ACTION REQUESTED BY:	Public Works, Finance
ACTION REQUESTED:	Award of Bid
SUMMARY BY:	Kathy Lamb

PROJECT DESCRIPTION / FACTS

- In preparation for the sanitary Sewer Interceptor project, existing sewer taps were reviewed to determine potential replacements.
- The City Engineer/Public Works Director has determined that existing sewer service at the corner of N Lightplant and W Aztec Blvd should be rerouted to eliminate the single service that routes under Hwy 516 to the existing sewer main to be replaced under the Animas bridge. The new sewer tap will be routed along the south end of Westside parking lot.
- The City has acquired the necessary utility easement.

PROCUREMENT / PURCHASING

- Invitation to Bid (ITB) was published on the city website and advertised in the Daily Times, Sunday, November 23, 2014. The bid was publically opened on Monday, December 8, 2014.
- Two bids were received, TRC Contracting retracted their bid prior to the bid opening.
- Low responsive bid was received from Sterling Brothers Construction Inc. The last bid awarded to Sterling Brothers Construction was the construction of the sewer line across Hampton Arroyo, awarded December 2013.
- This bid includes two items. One for the sewer line the other for paving the trench. Both are lump sum for a total bid of \$28,750. City Engineer estimate was \$25,120.
- A Notice of Award will be issued following Commission award of the bid which will allow Sterling Brothers Construction Inc. to acquire Performance and Payment bonds as required. The contract will be executed upon receipt of the bonds. The Notice to Proceed will be issued after the pre-construction meeting has been held.

FISCAL INPUT / FINANCE DEPARTMENT

- Project funding is appropriated in Joint Utility Wastewater Distribution as part of the Sewer Interceptor project. This project will NOT utilize loan/grant funds.
 - Bid with GRT: \$31,050

- This project is required to be completed within 40 days of the Notice to Proceed. If construction exceeds this time frame without an extension approved by the City Commission, liquidated damages will be assessed at \$500/day.

SUPPORT DOCUMENTS: Bid 15-0462 Tabulation
 Project Location Map

DEPARTMENT'S RECOMMENDED MOTION: Move to Approve the Award of Bid #15-0462 Lightplant Sewer Tap Project to Sterling Brothers Construction Inc. in the amount of \$28,750 and authorize City Manager to execute construction contract.



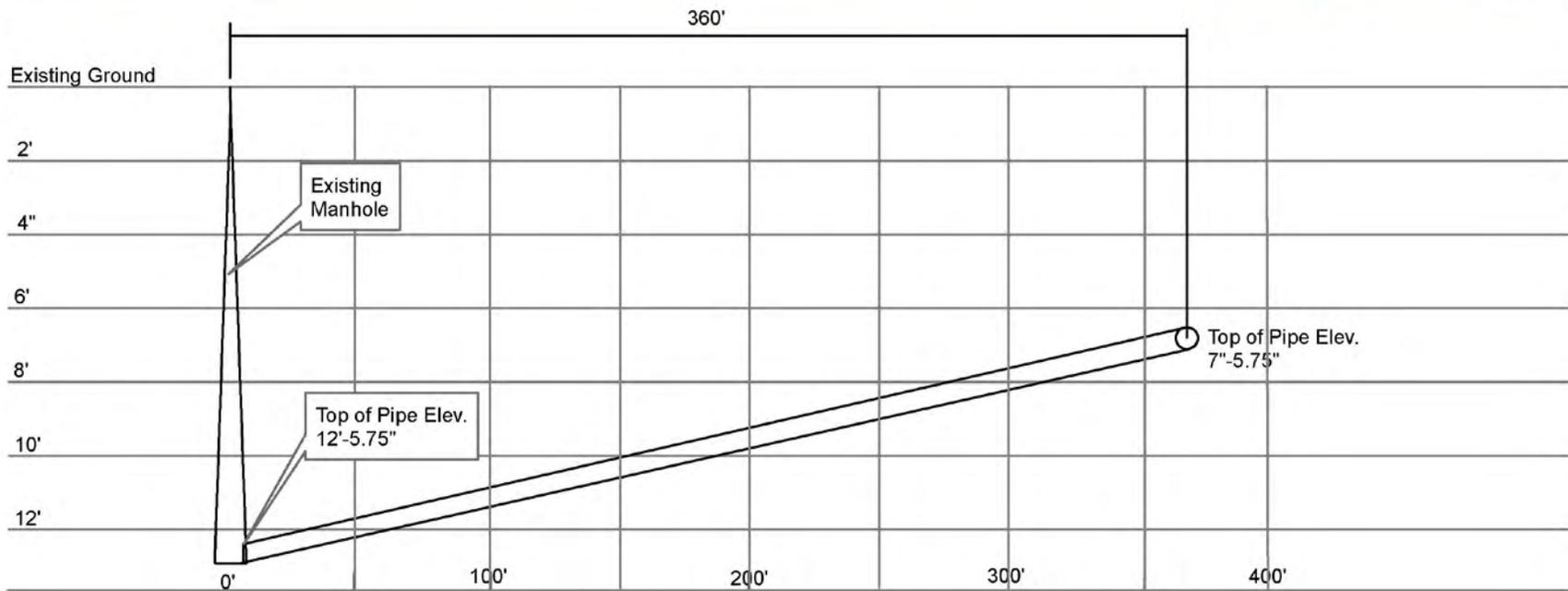
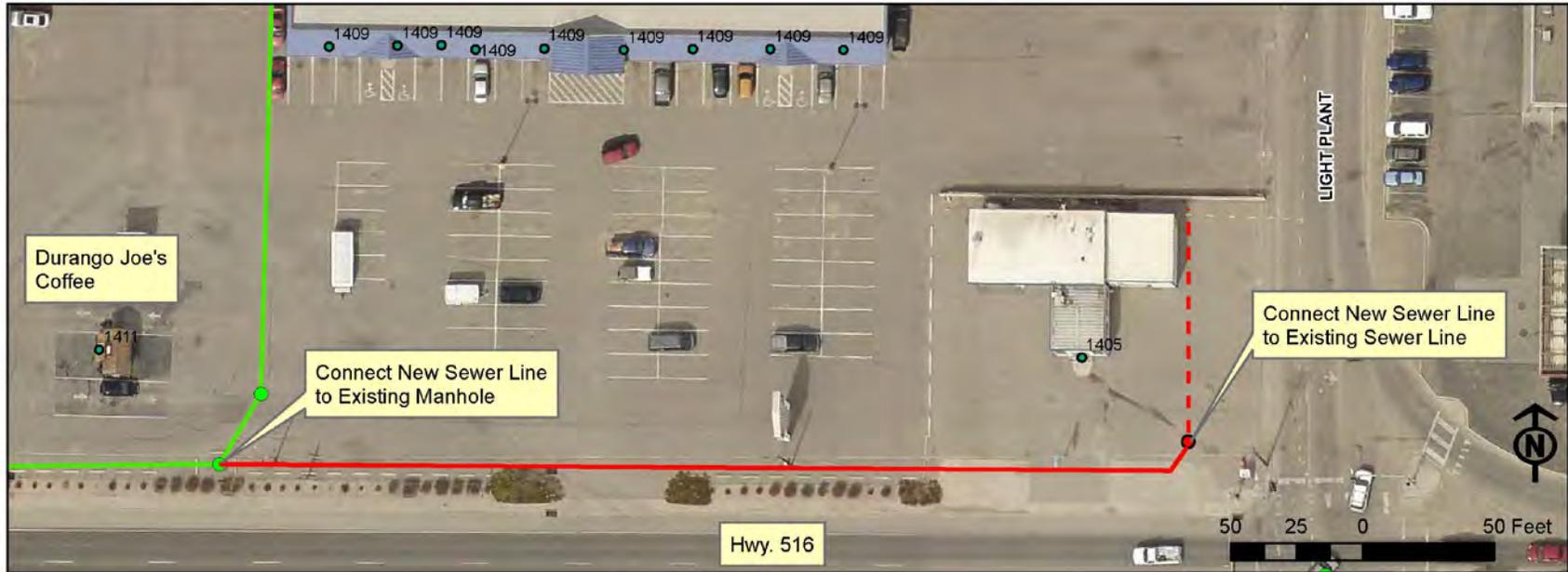
Bid Tabulation
Bid 15-0462
Lightplant Sewer Tap Project
Opened December 8, 2014 2:00 PM
Bid Award December 18, 2014

STERLING BROTHERS CONST			
Item	Description	UNIT	Total Bid
1	PVC SDR 35 Sewer Pipe (including fittings)	LS	\$ 14,000.00
2	Asphalt Paving	LS	\$ 14,750.00
TOTAL BID:			\$ 28,750.00
Total Bid Comparison Including 5% NM State Preference:			\$ 27,312.50
Total Bid Comparison Including 10% Resident Veteran Preference			

One bid retracted prior to bid opening.

Bid to be Awarded by Aztec City Commission on Thursday, December 18, 2014.

SECTION 0.12 - LIGHTPLANT SEWER PLAN



Bid

Staff Summary Report

MEETING DATE: October 14, 2014
AGENDA ITEM: VIII. CONSENT (B)
AGENDA TITLE: **Bid 15-0463 Pedestrian Bridge Lights**

ACTION REQUESTED BY: Electric Department, Finance Department
ACTION REQUESTED: Award of Bid 15-0463
SUMMARY BY: Kathy Lamb

PROJECT DESCRIPTION / FACTS

- Prior to the completion of the North Animas Pedestrian Bridge, the Electric Department worked with the Aztec Ruins staff to determine lighting requirements for the bridge. Both entities preferred a low light level for foot lighting on the bridge to minimize impacts on the natural environment.
- The Electric Department has researched and identified a fixture that met both the lighting requirement identified and could be installed on the bridge. The bid document was specific to a lighting fixture allowing no substitutions to lighting specification.
- The Electric Department will install the lights and will work into their late winter/early spring 2015 schedule. The lights will be installed alternating placement on each side of the bridge deck. If the placement results in insufficient lighting, additional funds will be requested with the FY16 budget

PROCUREMENT / PURCHASING

- Bid 15-0463 was posted and advertised on November 23, 2014
- Bids were opened on Monday, December 8, 2014
- One responsive bid was received (bid tabulation attached)
- Summit Electric submitted the only bid in the amount of \$37,060 for a quantity of 85 lights. The total amount bid exceeds available budget; however, Summit Electric will stand by their bid of \$436/light for a reduced quantity of 43 lights (not including gross receipts tax). Summit Electric indicates a 4 week delivery time after receipt of order.
- The lights will be installed alternating placement on each side of the bridge deck. If the placement results in insufficient lighting, additional funds will be requested with the FY16 budget.

FISCAL INPUT / FINANCE DEPARTMENT

- The FY15 Adopted Annual Budget includes sufficient funds for the award of this bid (Joint Utility Fund, Electric Department).
- Amount of the bid with gross receipts tax: \$20,248

SUPPORT DOCUMENTS: Bid 15-0463 Tabulation Form
Light Specification

DEPARTMENT'S RECOMMENDED MOTION: Move to Approve the Award of Bid 15-0463
Pedestrian Bridge Lights in the amount of \$18,748



Bid Tabulation
Bid 15-0463
Pedestrian Bridge Lights
Opened December 8, 2014 2:30 PM
Bid Award December 18, 2014

SUMMIT ELECTRIC							
Item	Description	UNIT	QTY	UNIT PRICE	Total Bid		
1	LED 18w White, capsule mounted luminaire, Bronze, as per bid specification	EA	85	436	\$ 37,060.00		
TOTAL BID:					\$ 37,060.00		
Total Bid Comparison Including 5% NM State Preference:					\$ 35,207.00		
Total Bid Comparison Including 10% Resident Veteran Preference							

Bid to be Awarded by Aztec City Commission on Thursday, December 18, 2014.
Reduced quantity to be awarded due to budget constraints. Summit Electric has agreed to maintain unit price for lower quantity.



LUMINAIRE SPECIFICATION

Head Office: Tel: 503-645-0500
 7144 NW Progress Ct Fax: 503-645-8100
 Hillsboro, Oregon 97124
 www.ligmanlightingusa.com

IP65 : Suitable for Wet Locations
 IK09 : Impact Resistant (Vandal Resistant)

UCA-30606

Capsule 5 surface mounted luminaire

A range of capsule shaped bulkheads with polycarbonate diffuser. Ideal for numerous indoor or outdoor applications. Capsule 1,2,3 and 4 can be given a more striking appearance by optional grille attachments. While Capsule 5 has a visor option to eliminate uplight.

Low copper content corrosion resistant die-cast aluminum frame and body. Stainless steel screws. Durable silicone rubber gasket and impact resistant UV stabilized polycarbonate diffuser. The luminaire is treated with a chemical chromated protection before powder coating, ensuring high corrosion resistance. Integral electronic control gear. Fixture mounts over a 3" octagonal junction box and is ADA compliant.

Physical Data

Length: 13.58"
 Height: 7.48"
 Weight: 4.8 lbs

Lamp

18w - 215lm - White - LED ☉

LED Color (Please Specify)

W30 - 3000K
 W40 - 4000K

Voltage (Please Specify)

120V
 277V
 Other _____

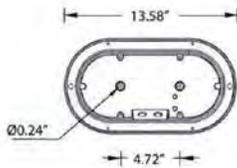
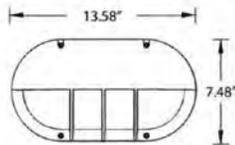
Options (Please Specify)

Color (Please Specify)

01-Black - RAL 9011 02- Dark Grey - RAL 7043
 03-White - RAL 9003 04 - Metallic Silver - RAL 9006
 05-Matt Silver - RAL 9006 07- Custom - RAL _____
 06-Bronze - RAL 6014



EMR - Remote Battery Pack



Mounting detail



Ordering Example : UCA - 30606 - White-18w - W30 - 120v - Options



Rev: 11/13

PROJECT: _____ DATE: _____

TYPE: _____ QUANTITY: _____ NOTE: _____

Ligman Lighting USA reserves the right to change specifications without prior notice, please contact factory for latest information.
 Due to the continual improvements in LED technology data and components may change without notice.



Staff Summary Report

MEETING DATE: 18 December 2014
AGENDA ITEM: VIII. Consent Items (C)
AGENDA TITLE: State Grant Agreement For Airport Projects

ACTION REQUESTED BY: Joshua W. Ray, City Manager
ACTION REQUESTED: Approve State Grant Agreement For Airport Projects
SUMMARY BY: Joshua W. Ray, City Manager

PROJECT DESCRIPTION / FACTS (Leading Department)

The City of Aztec took over management of the Aztec Airport in September of 2014. Since then, we have worked to clean up and upgrade the facility in an effort to market the Aztec Airport and to make it a better asset to our City.

Currently the City offers 100 LL fuel for airplanes utilizing a full service fueling station. This station has a 10,000 gallon fuel tank with a full-service gas pump. Currently, whenever a pilot lands at the airport, they call me and I go to fill up their plane.

This new system will include a 10,000 gallon tank with an attached pump and a debit/credit card reading system. This system will allow pilots to land and fuel their plane without having to interact with an attendant.

The grant from NM Aviation will provide for 90% of the cost for the fueling system. The City will match 10% of the grant. If the total project is \$180,000, the State will provide \$162,000 and the City will provide \$18,000.

Having the card reader system will strengthen the draw of our airport and hopefully attract new pilots who want to hanger in Aztec.

SUPPORT DOCUMENTS: State Grant Agreement For Airport Projects
Site Maps (Exhibit A)

DEPARTMENT'S RECOMMENDED MOTION: Move To Approve The Submission Of The State Grant Agreement For Airport Projects To The Aviation Division Of The NM Department Of Transportation.

DATE

STATE GRANT AGREEMENT FOR AIRPORT PROJECTS



AVIATION DIVISION

Sponsor

Respond to:
NMDOT - AVIATION DIVISION
PO Box 9830
Albuquerque, NM 87119
505-244-1788 phone
505-244-1790 fax

Contract No. _____

Project No. _____

Vendor No. _____

Expiration Date _____

Purchase Order No: _____

PROJECT AGREEMENT

This Project Agreement / Application is between , New Mexico (Sponsor) and The State of New Mexico, acting through the New Mexico Department of Transportation, Aviation Division (Division) for the purpose of carrying out the provisions of Section 64-1-13, NMSA 1978 of the Aviation Act (Act) and Sections 3-39-1 et. seq., NMSA 1978 of the Municipal Airport Law

NOW THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

SECTION ONE - PURPOSE

The purpose of this Agreement / Application is to provide funding, authorized in Section 64-1-13, NMSA 1978, to the Sponsor to assist in financing an airport or aviation project at

Based on the Sponsor's request, the Division has granted state funding to pay % of the Sponsor's share of all allowable costs for the project.

Project Description:

The site of development is more particularly described on the property map, attached as "Exhibit A"

Items of work, cost and source of funds as stated in "Exhibit B", of this Agreement.

FUNDING

	STATE	SPONSOR	OTHER	TOTAL
\$	<input type="text" value="180,000"/>	\$ <input type="text" value="20,000"/>	\$ <input type="text" value=""/>	\$ <input type="text" value="200,000"/>

ROUND TO THE NEAREST DOLLAR

SECTION TWO - PROJECT FUNDING

1. The funding for this project is set forth in EXHIBIT B.
2. The maximum obligation of the State payable by the Division under this Agreement is set forth in EXHIBIT B.
3. Funding approved under this Agreement / Application shall be paid subject to the availability of funds from the the State Aviation Fund. Any unexpended portion of funds subject to this agreement shall revert to the State Aviation Fund.

SECTION THREE - SPONSOR SHALL

1. Pay all costs, perform all labor, and supply all material, except as described in EXHIBIT B of this Agreement, for the purpose as described in SECTION ONE.
2. Provide a representative from its organization who shall serve as the single point of contact for the Division.
3. Maintain in force a **Maintenance Resolution** by which the Sponsor agrees to establish an airport maintenance program and appoint an individual to be responsible for its effectuation.
4. Initiate engineering, survey, and all other design activities, inspect Project construction and, coordinate all meetings.
5. Be responsible for all design and pre-construction activities.
6. Initiate and cause to be prepared all necessary documents including plans, specifications, and estimates (PS&E), and reports for this Project.
7. Assure that all design and PS&E are performed under the direct supervision of a Registered New Mexico Professional Engineer.
8. Design the Project in accordance with State and Federal guidelines and/or advisory circulars, hereby incorporated into this Agreement. The work will be accomplished in accordance with the Federal Aviation Administration's Standards for Specifying Construction of Airports (Advisory Circular 150/5370-10, current edition).
9. Notify the Division when the plans and specifications are sufficiently complete for review.
10. Make no changes in design or scope of work without documented approval of the Aviation Division.
11. Advertise for and contract for the construction of the Project.
12. Require the Engineer to prepare a final detail estimate of the work, indicating the bid items, the quantity in each item, the unit bid price and cost of the items based on low acceptable bid prices. Progress estimates shall be submitted to the Division in acceptable form so that details of quantities allowed on various items of work shall be shown on each progress payment.

13. The Sponsor shall submit to the Division one complete set of plans and specifications which incorporate all comments and recommendations received during pre-bid activities and which have been fully executed by all involved parties.
14. The Sponsor shall take all steps, including litigation if necessary, to recover State funds spent fraudulently, wastefully, or in violation of State statutes, or misused in any other manner on any project upon which State funds have been expended. For the purposes of this Agreement, the term "State funds" means funds, however used or disbursed by the Sponsor, that were paid by the Division pursuant to this Agreement. The Sponsor shall return the recovered State share, including funds recovered by settlement, order, or judgment, to the Division. It shall furnish to the Division, upon request, all documents and records pertaining to the determination of the amount of the State share of any settlement, litigation, negotiation, or the efforts taken to recover such funds. All settlements or other final dispositions by the Sponsor, in court or otherwise, involving the recovery of such State share shall be approved in advance by the Division.
15. The Sponsor shall, upon reasonable notice, allow the Division the right to inspect the project for the purposes of determining if it is being constructed in a good and workmanlike manner, and if the approved plans and specifications are being satisfactorily complied with. If such inspection discloses a failure to substantially meet such requirements and standards as, agreed to by the Division, the Division may terminate payment or payments until a mutually satisfactory remedy is agreed upon.

SECTION FOUR - DIVISION SHALL

1. Assign a contact person for this project.
2. Provide timely reviews of all submittals of scopes, plans, specifications, investigations or other documents.
3. The Division shall not provide an extensive check of any plans submitted by the Sponsor. Acceptance of plans by the Division does not relieve the Sponsor or its Consultant of their responsibility for errors and omissions.

SECTION FIVE - BOTH PARTIES AGREE

1. If upon termination of this Agreement there remain any properties, materials or equipment belonging to the Division, the Sponsor shall account for the same and dispose of them as directed by the Division.
2. The allowable costs of the Project shall not include costs determined by the Division to be ineligible for consideration under the Act.
3. The expenditure of any State money is subject to approval by the Division.

4. The Local Governments Road Fund, established pursuant to Section 67-3-28.2, NMSA 1978, shall not be used to administer this project.
5. A Sponsor that has received a distribution pursuant to Section 67-3-28.2, NMSA 1978, may not use this distribution to meet its match required for this project.

SECTION SIX - DISPOSITION OF PROPERTY

1. **Disposition of Property** - Any equipment, materials or supplies procured under this Agreement shall be used solely for aviation purposes and must be stored at the airport.

SECTION SEVEN - REPRESENTATIONS

The Sponsor hereby represents and certifies the following by signing this Agreement:

1. **Legal Authority** - The Sponsor has the legal power and authority: (1) to do all things necessary in order to undertake and carry out the Project in conformity with the provisions stated in the New Mexico Aviation Act and Rules and Regulations pursuant thereto; (2) to accept, receive and disburse grants of funds from the State of New Mexico in aid of the Project; and (3) to carry out all provisions stated in this "Grant Agreement for Airport Projects."
2. **Defaults** - The Sponsor is not in default on any obligation to the State of New Mexico relative to the development, operation or maintenance of any airport or aviation project.
3. **Possible Disabilities** - The Sponsor states, by execution of this Agreement, there are no facts or circumstances (including the existence of effective or proposed leases, use agreements, or other legal instruments affecting use of the airport or the existence of pending litigation or other legal proceedings) which in reasonable probability might make it impossible for the Sponsor to carry out and complete the Project.
4. **Land** - The Sponsor holds the property interest in the areas of land which are to be developed or used as part of or in connection with the Project and is identified in a current Airport Property Map. The Sponsor further certifies that the aforementioned is based on a title examination by a qualified attorney or title company who has determined that the Sponsor holds the stated property interests.

SECTION EIGHT - ASSURANCES

The Sponsor hereby covenants and agrees with the Division the following by signing this Agreement

1. The Sponsor agrees that it will operate the airport receiving aid under this application for the use and benefit of the public on fair and reasonable terms, and without unjust discrimination.
2. The Sponsor specifically agrees that it will keep said airport open to all types, kinds and classes of aeronautical use without discrimination between such types, kinds, and classes: **provided**, that the Sponsor establish such fair, equal and not unjustly discriminatory conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport;

3. The Sponsor agrees that in its operation of the airport and all facilities. Neither it nor any person or organization occupying space on facilities thereon will discriminate against any person or class of persons by reason of race, color, creed, or national origin in the use of the facility provided for the public on the airport; and further that any person, firm or corporation rendering service to the public on the airport will do so on a fair, equal and not unjustly discriminatory basis to all users thereof.
4. The Sponsor will operate and maintain in a safe and serviceable condition the airport and all facilities connected therewith which are necessary to serve the aeronautical users and will not permit any activity which would interfere with its use for airport purposes.
5. The Sponsor will, by acquisition of land interest, acquisition of easements, airspace zoning, or other accepted means, protect the runway approaches and the airspace in the immediate vicinity of the airport from the construction, alteration, erection or growth of any structure which would interfere with the use or operation of the airport.
6. The Sponsor agrees that no landing fee shall be charged any owner or operator of aircraft using said airport; which would be in violation of Section 64-1-16, NMSA 1978, as amended.
7. If said airport is on private land, the Sponsor shall attach a duly executed agreement permitting public use of this land for airport purposes without limit as to time, titled "Exhibit C".
8. The Sponsor agrees to comply with the New Mexico Aviation Act and the rules and regulations promulgated there under.
9. The Sponsor hereby specifically agrees that it shall not award the contract for which this grant is given, nor shall bidding documents be given to any contractor which or who is subject to suspension or debarment by the U.S. Department of Transportation or any of its agencies, or the New Mexico Department of Transportation at the time of the bidding or award of the contract. Violation of this provision shall void this grant.

SECTION NINE - COMPLIANCE WITH LAW

The Sponsor shall comply with all Federal, State, and local laws and ordinances applicable to the project.

SECTION TEN - THIRD PARTY BENEFICIARY CLAUSE

This Agreement is not intended by any of the provisions of any of its parts to create in the public, or any member thereof, a third party beneficiary or to authorize anyone not a party to this Agreement to maintain a suit for wrongful death, bodily and or personal injury to persons, damage to property, and/or any other claim(s) whatsoever pursuant to the provisions of this Agreement.

SECTION ELEVEN - COMPLIANCE WITH EMPLOYMENT LAW AND COOPERATION WITH DEPARTMENT INVESTIGATIONS

The Sponsor shall comply with all applicable Federal, State, and Department laws, regulations and policies, including, but not limited to laws governing, civil rights, equal opportunity compliance, environmental issues, workplace safety, employer-employee relations and all other laws governing operation of the workplace, including laws and regulations hereafter enacted. The Sponsor shall furnish all information and reports required by, or pursuant to, the rules, regulations, and policies of the Department, and will permit access to, and the interview of, its employees, and the, except for legally privileged material, examination and copying of its employee records by investigators for the Department's Equal Opportunity Programs Bureau, Office of Inspector General, and Risk Management Bureau, the New Mexico Attorney General's Office, the New Mexico Department of Labor, and all branches of the United States Department of Transportation; and will otherwise fully cooperate with all such investigations.

SECTION TWELVE - NEW MEXICO TORT CLAIMS ACT

By entering into this Agreement, neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1, et seq., NMSA 1978, as This paragraph is intended only to define the liabilities between the parties hereto and it is not intended to modify, in any way, the parties' liabilities as governed by common law or the New Mexico Tort Claims Act. The Grantee and its "public employees" as defined in the New Mexico Tort Claims Act, and the Department and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and/or do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies and/or waives any provision of the New Mexico Tort Claims Act.

SECTION THIRTEEN - ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS

There shall be strict accountability for all receipts and disbursements relating hereto. The Sponsor shall maintain all records and documents relative to the Project for a minimum of three (3) years after completion of said Project. The Sponsor shall furnish the Division or State Auditor, upon demand, all records relevant to this Agreement and allow them the right to audit all records which support the terms of this Agreement.

SECTION FOURTEEN - REIMBURSEMENTS

Funds expended by the Sponsor in accordance with the terms of this Agreement shall be reimbursed to the Sponsor. The Sponsor shall not be reimbursed for any costs incurred prior to the full execution of the Agreement, after the expiration of the Agreement or in excess of the maximum dollar amount of the Agreement unless the maximum dollar amount is duly amended prior to incurring the service or deliverable. Claims for reimbursement requests shall be completed on a (State) form A-1159, Request for Reimbursement.

Each request for reimbursement shall contain proof of payment for valid expenditures for services rendered by a third party or items of tangible property received by the Sponsor for the implementation of the Project. The Division reserves the right to withhold reimbursement on requests that are incorrect and/or incomplete. The Final reimbursement request must be received no later than thirty (30) days after completion of the project or the expiration of this Agreement.

Any unexpended portion of funds subject to this Agreement shall revert to the State Aviation Fund.

SECTION FIFTEEN - AUTHORIZATION OF EXPENDITURES

The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the State Legislature this Agreement shall terminate upon written notice given by the Division. The Division is expressly not committed to the expenditure of any funds until such time, as they are programmed, budgeted, encumbered and approved for expenditure by the Division. The Division's decision as to whether its funds are sufficient for the fulfillment of this Agreement shall be final.

SECTION SIXTEEN - TERM

The Agreement shall not take effect until executed by all of the parties hereto. This Agreement shall not exceed two (2) years. This agreement shall expire two (2) years from complete execution.

SECTION SEVENTEEN - TERMINATION

If the Sponsor fails to comply with any provision of this Agreement, the Division has the option to terminate this Agreement. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to termination of this Agreement.

SECTION EIGHTEEN - MERGER

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written Agreement. No prior agreement or understandings, verbal or otherwise, by parties or their agents shall be valid or enforceable unless embodied in this Agreement. The terms of this Agreement are lawful; performance of all duties and obligations herein shall conform with and do not contravene any State, local, or Federal statutes, regulations, rules, or ordinances.

SECTION NINETEEN - SEVERABILITY

In the event that any portion of this Agreement is determined to be void, unconstitutional, or otherwise unenforceable, the remainder of this Agreement shall remain in full force and effect.

SECTION TWENTY - AMENDMENT

This Agreement shall not be altered, modified, or amended except by an instrument in writing by the Sponsor and documented acceptance by the Division.

SECTION TWENTYONE - RATIFICATION AND ADOPTION

The Sponsor's execution of this Agreement is evidence of acceptance of the offer of state funding from the Division and ratification and adoption of the terms and conditions of this Agreement, including but not limited to all assurances, statements, representations, warranties and covenants herein.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT ON THE DATE AND YEAR WRITTEN BELOW

Recommended by AVIATION DIVISION

New Mexico Department of Transportation

By: _____
Aviation Division Director or
Designee

By: _____
Cabinet Secretary or
Designee

Date: _____

Date: _____

SPONSOR:

City of Aztec

PRINT NAME

By: _____

Date: _____

Approved as to form and legal sufficiency by the NMDOT Office of General Counsel

By: _____
Assistant General Counsel

Date: _____

EXHIBIT B PROJECT COSTS

GRANTEE City of Aztec

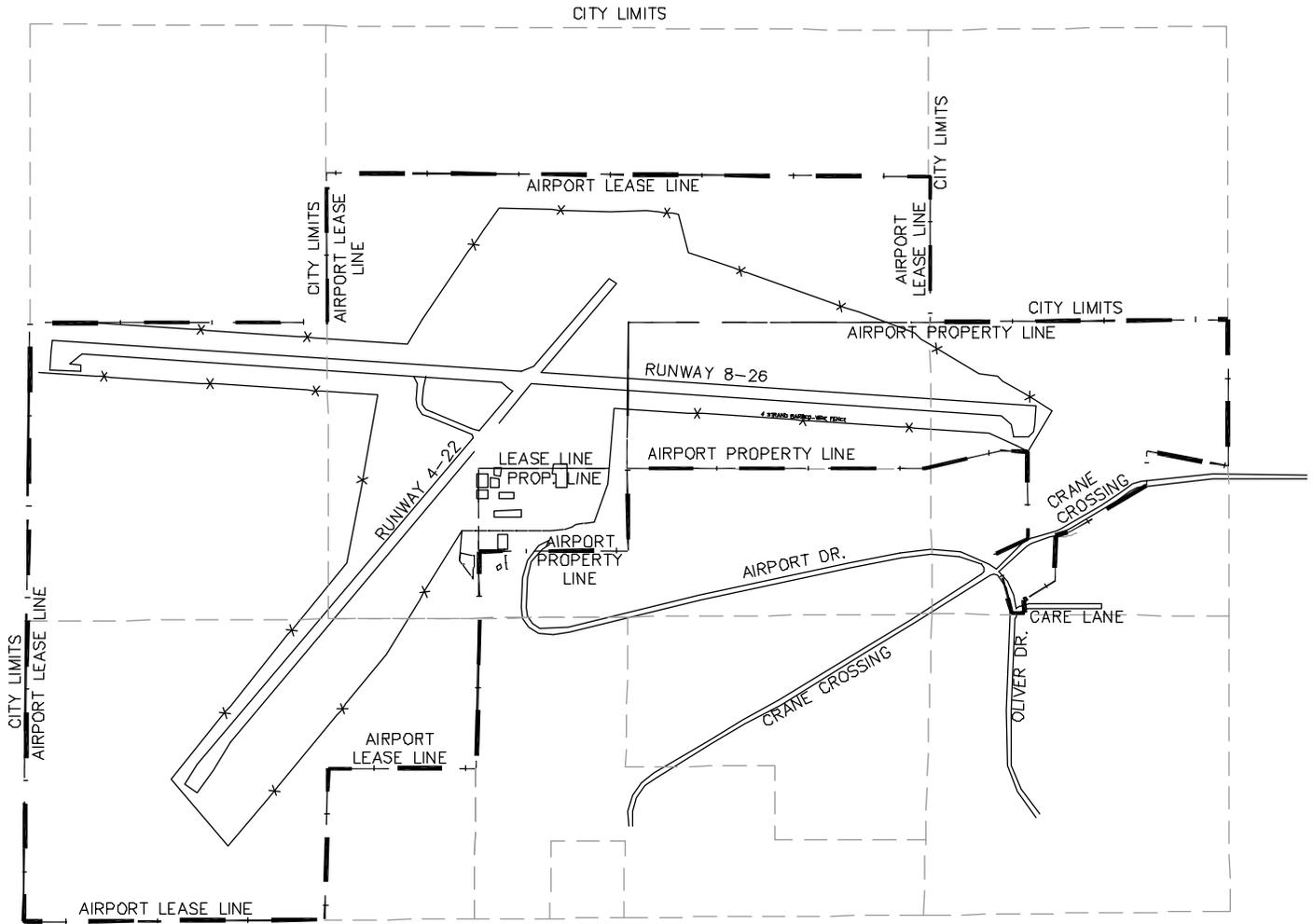
ITEM NO.	ITEM OF WORK AND DESCRIPTION	STATE FUNDS	SPONSOR FUNDS	OTHER FUNDS	TOTAL ESTIMATED COSTS
1	10,000 Gallon AvGas Fueling Facility	\$ 180,000	\$ 20,000	\$	\$ 200,000

ITEM NO.	ITEM OF WORK AND DESCRIPTION	STATE FUNDS	SPONSOR FUNDS	OTHER FUNDS	TOTAL ESTIMATED COSTS
		\$	\$	\$	\$

ITEM NO.	ITEM OF WORK AND DESCRIPTION	STATE FUNDS	SPONSOR FUNDS	OTHER FUNDS	TOTAL ESTIMATED COSTS
		\$	\$	\$	\$

ITEM NO.	ITEM OF WORK AND DESCRIPTION	STATE FUNDS	SPONSOR FUNDS	OTHER FUNDS	TOTAL ESTIMATED COSTS
		\$	\$	\$	\$

TOTALS	\$ 180,000	\$ 20,000	\$	\$ 200,000
---------------	------------	-----------	----	------------



CITY-OWNED LAND:

T30N, R11W, NMPM, NEW MEXICO

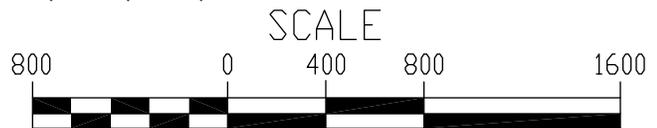
- SECTION 6: SECTION 6: N1/2 SE1/4 SE1/4 AND THE NORTH 360 FEET OF THE SE1/4 SW1/4 SE1/4
- SECTION 5: NW1/4 SW1/4 SW1/4 LESS A PORTION (0.5 ACRES, MORE OR LESS) OF A TRACT OF LAND DEEDED TO DON ADAMS BY THE CITY ON JUNE 1, 1988.

BUREAU OF LAND MANAGEMENT LEASED LAND:*

T30N, R11W, NMPM, NEW MEXICO

- SECTION 6: S1/2 OF LOTS 13 AND 14, LOT 15, N1/2 SW1/4 SE1/4 AND SW1/4 SW1/4 SE1/4;
- SECTION 7: LOT 5 AND NW1/4 NW1/4 NE1/4

* LAND TRANSFER FROM BLM TO THE CITY OF AZTEC IN PROGRESS FEBRUARY, 2010



SCALE

(FEET)

1 INCH = 800 FT.

SHEET NUMBER

1 of 1

EXHIBIT A

AZTEC MUNICIPAL AIRPORT (N19)
AZTEC, NEW MEXICO

DRAWING INFO

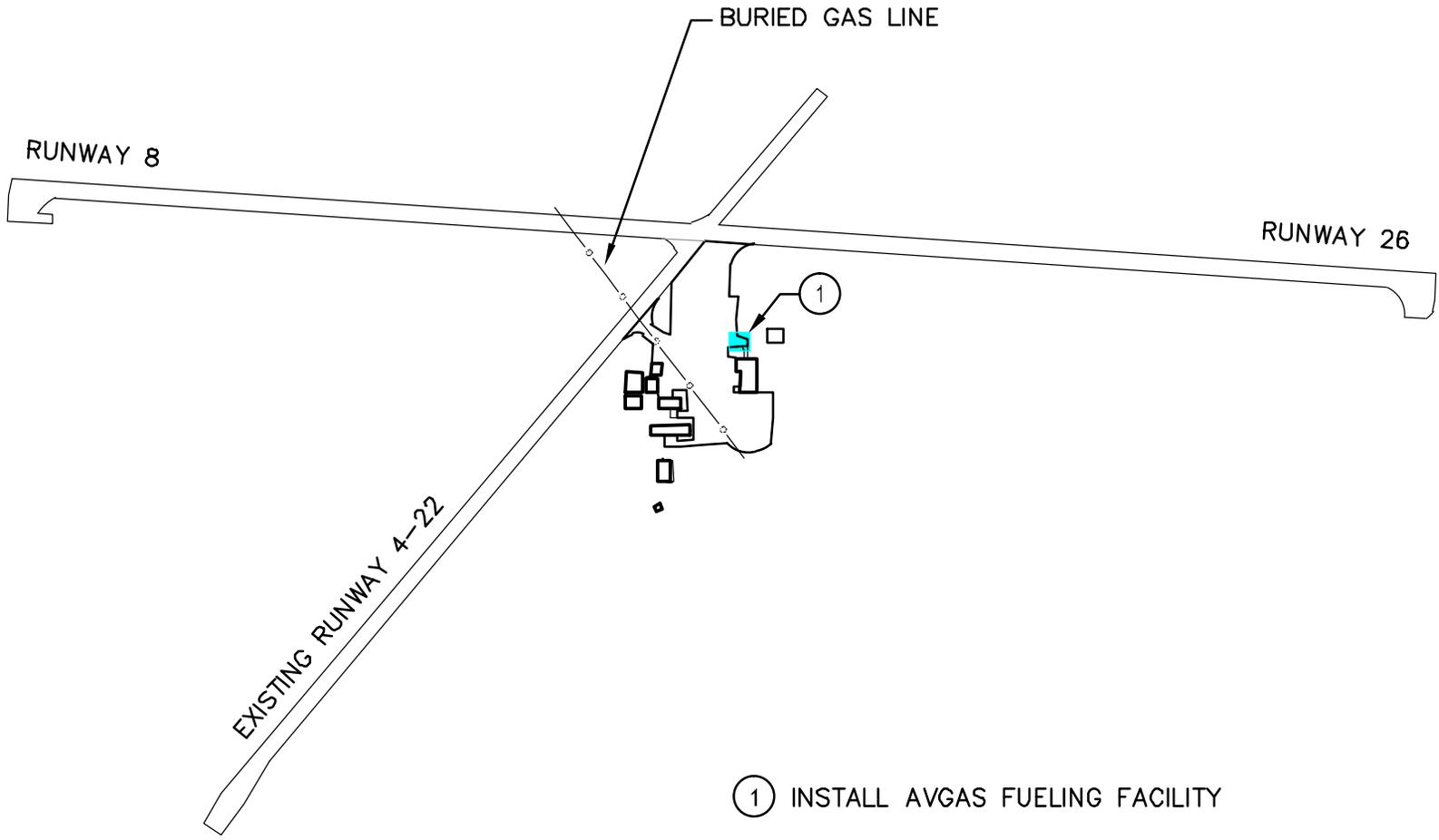
Exhibit A.dwg

1" = 2500'

SHEET INFO

DRAWN	MDE
CHECKED	
LAST EDIT	
PLOT DATE	

WHPacific



① INSTALL AVGAS FUELING FACILITY



WHPacific

SHEET INFO			
DRAWN	AMP	CHECKED	DEE
LAST REVISION			12/2/2017
PLOT DATE			12/2/2014

DRAWING INFO	
AZTEC MUNICIPAL AIRPORT (N19)	

PROJECT SKETCH
 INSTALL AVGAS FUELING FACILITY
 AZTEC MUNICIPAL AIRPORT (N19)
 AZTEC, NEW MEXICO

SHEET NUMBER
1

Staff Summary Report

MEETING DATE:	December 18, 2014
AGENDA ITEM:	VIII. CONSENT AGENDA (D)
AGENDA TITLE:	<u>Investment Tax Credit Resolution –2014-947</u>
ACTION REQUESTED BY:	William M. Homka AICP, CFM Community Development Director
ACTION REQUESTED:	Resolution Endorsing Proposed Legislation to Create the Infrastructure Tax Credit in New Mexico's 52 nd Legislature, First Session - 2015
SUMMARY BY:	William M. Homka AICP

PROJECT DESCRIPTION / FACTS

The Northwest New Mexico Council of Governments (NNMCG) Board of Directors created Resolution 2014-01 endorsing proposed legislation to create investment tax credit. The council is designated by the State of New Mexico as State Planning and Development District 1 and by the US Department of Commerce as a Certified Economic Development District serving Cibola, McKinley and San Juan Counties. The proposed legislation is being put forth to all members of these counties within the Development/Commerce District for endorsement to broaden the communitywide awareness about the proposed legislation as well as to garner support for its passage by the New Mexico Legislature in 2015.

Together with its business development partners in our region, the NNMCG has determined we lack an available building inventory which serves as a major shortfall in attracting businesses that are searching for available sites. The NNMCOG has been assisting the region with drafting and vetting a proposal for legislation to establish an investment tax credit that will serve as an incentive for companies to construct commercial buildings for economic activity in communities and expand local building inventories. This enhances business recruitment opportunities for companies looking to immediately locate and begin conducting business. This would be especially helpful for economic development entities devoted full time to attracting investment to our area, such as the Four Corners Economic Development Corporation.

The draft resolution consists of eight pages and has been summarized by Jeffrey G. Kiely, the Board Secretary and Executive Director for the NNMCG. That summary and a copy of the legislation proposed for the First Session of 2015 of the State of New Mexico Legislature (52nd Legislature) is attached for your review. Since the inception of the House Bill, it has changed from one that merely creates a tax credit for Rural Infrastructure to one that works in the following breakdowns: 30% credits reserved for Rural Infrastructure Investments; 20% credits reserved for Urban Infrastructure Investments, and; 50% credits for New Construction.

The City of Aztec Economic Development Advisory Board (EDAB) reviewed the summary of 2014-01 at its regularly scheduled meeting on November 20, 2014. There were a few questions about what the investment credit means to Aztec. In general the consensus of the discussion was supportive of the credit's creation. W. Homka explained that he reviewed the State of New Mexico's Economic Development website that he did not find very many incentives available to companies that were creating less than \$1 million in investment. Other than the Federal SBA

program, he wasn't sure what tools the area has to assist smaller business investment and entrepreneurs in New Mexico, San Juan County and Aztec. Yet this resolution does exactly the same thing, setting the minimum investment at \$1 million and a credit of \$100,000 for every one (1) job created, with the minimum being one (1). The terms are spelled out on the second page of the summary under 'Mechanism.' Even so, the EDAB passed a motion of support for the proposed legislation and encourages the City of Aztec Commissioners adopt a similar resolution of support.

There is no downside to this legislation. The investment credit would provide companies with a financial tool to enable them to market up to thirty percent of the cost of construction to credit buyers, thus providing them with upfront cash to leverage bank loans for construction. It will also provide rural and small town communities, such as Aztec, with an added advantage that might result in significant new local development, including increased employment and tax revenues. All of these benefits are stated within the summary of the resolution and can be found within the text of the House Bill's eight (8) pages.

FINDING OF FACT

1. New Mexico lacks enough incentives to attract job creation and investment to the state, its rural regions and small communities;
2. This House Bill is being circulated to all of the communities within the three county area of the Northwest New Mexico Council of Governments for support and endorsement
3. There is no net loss of revenue caused by the State's passage of this bill, and;
4. The minimum level of investment is still at \$1 million, with a minimum of one job created for every \$100,000 credit.

SUPPORT DOCUMENTS: Support Resolution 2014-947
Summary of Northwest New Mexico Council of Governments
Resolution No. 2014-01
Full Text – House Bill 52nd Legislature – State of New Mexico,
First Session, 2015 – Discussion Draft

DEPARTMENT'S RECOMMENDED MOTION: Support Investment Tax Credit Resolution
2014-947

Resolution 2014-947

**A Resolution Supporting
Proposed Legislation to Create a New Mexico Investment Tax Credit**

WHEREAS, the Governing Body of the City of Aztec recognizes the need to provide community leadership and to participate in economic and community development in order to maintain an acceptable level of services and an acceptable quality of life to the citizens of Aztec; and

WHEREAS, Northwest New Mexico Council of Governments (NWNMCOG) is designated by the State of New Mexico as State Planning and Development District 1 and by the US Department of Commerce as a Certified Economic Development District serving Cibola, McKinley and San Juan Counties; and

WHEREAS, the NWNMCOG, together with its business development partners, has determined the lack of available building inventory serves as a major shortfall in attracting businesses that are searching for available sites, and

WHEREAS, the NWNMCOG has been assisting the local communities in drafting and vetting a proposal for legislation to establish an investment tax credit, as an incentive for companies to construct commercial buildings for economic activity in the state, thereby expanding the building inventory and enhancing business recruitment opportunities; and

WHEREAS, the investment tax credit would provide companies with a financial tool that would enable them to market up to thirty percent of the cost of construction to credit buyers, thus providing them with upfront cash to leverage bank loans for construction; and

WHEREAS, an investment tax credit would provide communities in New Mexico with an added advantage that could result in significant new local development, including increased employment and tax revenues;

NOW, THEREFORE, BE IT RESOVLED THAT the City of Aztec Governing Body hereby supports legislation creating a New Mexico Investment Tax Credit Program to stimulate economic development by providing a near cash incentive, encouraging private investment in facilities in New Mexico, to differentiate New Mexico communities from its competition among other states for industry and to accelerate job creation.

PASSED, ADOPTED AND APPROVED this 18th day of December 2014.

ATTEST:

Sally Burbridge, Mayor

City Clerk, Karla Saylor

9/26/14

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO TAXATION; CREATING THE RURAL INFRASTRUCTURE TAX
CREDIT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of Chapter 7 NMSA 1978 is
enacted to read:

"[NEW MATERIAL] RURAL INFRASTRUCTURE TAX CREDIT.--

A. Prior to January 1, 2021, a taxpayer who makes a
qualified investment that is likely to produce quantifiable
benefits may claim a tax credit in an amount not to exceed
thirty percent of the cost of the qualified investment against
the taxpayer's modified combined tax liability or the
taxpayer's tax liability pursuant to the provisions of the
Income Tax Act and the Corporate Income and Franchise Tax Act;
provided that the amount of the credit associated with the

.197587.1

underscoring material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 purchase of land or fixed assets shall not exceed fifty percent
2 of the amount of the credit associated with the cost of
3 construction of one or more buildings. The tax credit provided
4 by this section may be referred to as the "rural infrastructure
5 tax credit".

6 B. The purposes of the rural infrastructure tax
7 credit are to:

8 (1) stimulate economic development by
9 providing gap funding for manufacturers, processors and natural
10 resource extractors to build infrastructure;

11 (2) encourage private investment in
12 manufacturing facilities;

13 (3) give rural communities an advantage in
14 attracting investment by private industry; and

15 (4) promote job creation.

16 C. A taxpayer may claim a rural infrastructure tax
17 credit in an amount not to exceed fifteen million dollars
18 (\$15,000,000) per qualified investment for not more than three
19 qualified investments in a taxable year. A taxpayer shall
20 claim the rural infrastructure tax credit no later than one
21 year following the end of the calendar year in which the
22 taxpayer receives a certificate of eligibility pursuant to
23 Subsection D of this section.

24 D. A taxpayer may apply for certification of
25 eligibility for the rural infrastructure tax credit from the

.197587.1

underscored material = new
[bracketed material] = delete

1 authority. The authority shall consider for certification
2 completed applications in the order received. If the authority
3 determines that the project is a qualified investment that is
4 likely to produce quantifiable benefits, it shall issue a
5 certificate of eligibility to the taxpayer, subject to the
6 limitation in Subsection E of this section. The certificate
7 shall be dated and shall include a calculation of the amount of
8 the rural infrastructure tax credit for which the taxpayer is
9 eligible. The authority may issue rules governing the
10 procedure for administering the provisions of this subsection.

11 E. The authority may issue a certificate of
12 eligibility pursuant to Subsection D of this section only if
13 the total amount of rural infrastructure tax credits
14 represented by those certificates in any calendar year does not
15 exceed two hundred million dollars (\$200,000,000). If the
16 applications for certificates for rural infrastructure tax
17 credits represent an aggregate amount exceeding two hundred
18 million dollars (\$200,000,000) for any calendar year,
19 certificates shall be issued in the order that the completed
20 applications were received. The excess applications that would
21 have been certified, but for the limit imposed by this
22 subsection, shall be certified, subject to the same limit, in
23 subsequent calendar years.

24 F. To claim the rural infrastructure tax credit, a
25 taxpayer shall provide to the department a certificate of

.197587.1

underscoring material = new
~~[bracketed material] = delete~~

1 eligibility issued by the authority pursuant to Subsection D of
2 this section and any other information that the department may
3 require to determine the amount of the tax credit due the
4 taxpayer. If the requirements of this section have been
5 complied with, the department shall approve the claim for the
6 credit.

7 G. To receive a rural infrastructure tax credit, a
8 taxpayer shall apply to the department on forms and in the
9 manner prescribed by the department. The application shall
10 include a certification made pursuant to Subsection D of this
11 section. If the requirements of this section have been
12 complied with, the department shall issue to the taxpayer a
13 document granting the tax credit. The document shall be
14 numbered for identification and shall declare its date of
15 issuance and the amount of the tax credit allowed pursuant to
16 this section. The document may be submitted by the applicant
17 with that taxpayer's tax return or may be sold, exchanged or
18 otherwise transferred to another taxpayer. The parties to such
19 a transaction shall notify the department of the sale, exchange
20 or transfer within ten days of the sale, exchange or transfer.

21 H. That portion of a rural infrastructure tax
22 credit that exceeds a taxpayer's tax liability in the taxable
23 period in which the credit is claimed may be carried forward
24 for a maximum of ten consecutive taxable years.

25 I. Married individuals filing separate returns for

.197587.1

underscored material = new
[bracketed material] = delete

1 a taxable year for which they could have filed a joint return
2 may each claim only one-half of the rural infrastructure tax
3 credit that would have been claimed on a joint return.

4 J. A taxpayer may be allocated the right to claim a
5 rural infrastructure tax credit in proportion to the taxpayer's
6 ownership interest if the taxpayer owns an interest in a
7 business entity that is taxed for federal income tax purposes
8 as a partnership and that business entity has met all of the
9 requirements to be eligible for the tax credit. The total tax
10 credit claimed by all members of the partnership or limited
11 liability company shall not exceed the allowable tax credit
12 pursuant to Subsection C of this section.

13 K. If the department determines that the qualified
14 investment is not substantially complete within twelve months
15 from the date that a certificate of eligibility was issued, the
16 department shall timely notify the taxpayer of that
17 determination. The taxpayer may request an extension of time
18 in which to complete the project, and the department, if it
19 determines that meaningful and measurable progress toward
20 project completion is being made, may grant a six-month
21 extension. A taxpayer may request, and the department may
22 grant, more than one extension. If no request is made or if
23 the department determines that meaningful and measurable
24 progress toward project completion has not been made, the
25 department shall:

.197587.1

1 (1) if the taxpayer has not claimed the rural
2 infrastructure tax credit, extinguish the credit; and

3 (2) if the taxpayer has claimed the rural
4 infrastructure tax credit, deem any taxes to which the tax
5 credit was applied as unpaid and extinguish the remainder of
6 the unclaimed tax credit, if any.

7 L. The authority and the department shall compile
8 an annual report on the rural infrastructure tax credit that
9 shall include the number of certificates of eligibility that
10 the authority issued in the previous year, the number of
11 taxpayers approved by the department to receive the tax credit,
12 the aggregate amount of tax credits approved and any other
13 information necessary to evaluate the effectiveness of the tax
14 credit. Before December 1 of each year, the department shall
15 compile and present the annual report to the revenue
16 stabilization and tax policy committee and the legislative
17 finance committee with an analysis of the effectiveness and
18 cost of the tax credit and whether the tax credit is performing
19 the purpose for which it was created.

20 M. As used in this section:

21 (1) "authority" means the New Mexico finance
22 authority;

23 (2) "department" means the taxation and
24 revenue department;

25 (3) "modified combined tax liability" means

.197587.1

underscored material = new
[bracketed material] = delete

1 the total liability for the reporting period for the gross
2 receipts tax imposed by Section 7-9-4 NMSA 1978 together with
3 any tax collected at the same time and in the same manner as
4 that gross receipts tax, such as the compensating tax, the
5 withholding tax, the interstate telecommunications gross
6 receipts tax, the surcharges imposed by Section 63-9D-5 NMSA
7 1978 and the surcharge imposed by Section 63-9F-11 NMSA 1978,
8 minus the amount of any credit other than the rural job tax
9 credit applied against any or all of these taxes or surcharges;
10 but "modified combined tax liability" excludes all amounts
11 collected with respect to local option gross receipts taxes;

12 (4) "qualified institution" means a state-
13 chartered financial institution or a nationally chartered
14 financial institution;

15 (5) "qualified investment" means an investment
16 of at least one million dollars (\$1,000,000) in a commercial
17 enterprise project:

18 (a) that is located in a county that is
19 not a class A county;

20 (b) whose purpose is to: 1) manufacture
21 goods for sale; 2) extract natural resources for sale; or 3)
22 process raw materials for sale;

23 (c) that includes the construction of at
24 least one building or the construction of at least one building
25 and the purchase of land or fixed assets, or both;

.197587.1

1 (d) that is not functionally related or
2 subordinate to another project that has received or will
3 receive a rural infrastructure tax credit; and

4 (e) for which a loan from a qualified
5 institution has closed; and

6 (6) "quantifiable benefits" means economic
7 development as measured by a variety of factors, including
8 increased local hiring, job training, direct and indirect job
9 creation, increased gross receipts tax collection, increased
10 occupancy tax collection, increased property tax collection,
11 increased state corporate and personal income tax collection
12 and increased other fee and revenue collections."

13 SECTION 2. APPLICABILITY.--The provisions of this act
14 apply to taxable years beginning on or after January 1, 2015.

15 - 8 -
16
17
18
19
20
21
22
23
24
25

underscoring material = new
[bracketed material] = delete

NORTHWEST NEW MEXICO COUNCIL OF GOVERNMENTS

BOARD OF DIRECTORS

Resolution No. 2014-01

**ENDORISING PROPOSED LEGISLATION
TO CREATE A RURAL INVESTMENT TAX CREDIT**

US/MSD

*30% Rural
20% Urban
New Construction*

WHEREAS, the Northwest New Mexico Council of Governments is designated by the State of New Mexico as State Planning and Development District 1 and by the US Department of Commerce as a certified Economic Development District serving Cibola, McKinley and San Juan Counties; and

WHEREAS, in its capacity as an Economic Development District, the Council researches, plans and administers the region's "Comprehensive Economic Development Strategy" (CEDS), including updates every five years, provides professional services to local governments and communities to develop plans and policies, access resources and build capacity for development, and partners with local economic development organizations in planning, financing and implementing projects and Initiatives; and

WHEREAS, the Council is partnering with the Greater Gallup Economic Corporation and other local agencies in fostering a strong network for advancing economic opportunity in the Gallup-McKinley County sub-region; and

WHEREAS, the local network has identified lack of building inventory as a major shortfall in the regional community, in terms of what site selectors are looking for in relocating their businesses; and

WHEREAS, the Council has been assisting the local network in drafting and vetting a proposal for legislation to establish a rural investment tax credit, as an incentive for companies to construct commercial buildings for economic activity in the community, thereby expanding local building inventory and enhancing business recruitment opportunities; and

WHEREAS, the rural investment tax credit would provide companies with a financial tool that would enable them to market up to thirty percent of the cost of construction to credit buyers, thus providing them with upfront cash to leverage bank loans for construction; and

WHEREAS, a rural investment tax credit would provide rural and small town communities in New Mexico with an added advantage that could result in significant new local development, including increased employment and tax revenues;

NOW, THEREFORE, BE IT RESOLVED THAT the Board of Directors hereby endorses the draft legislation, attached hereto by reference and as may be further modified under expert advice, which would establish a rural investment tax credit program in New Mexico.

PASSED, APPROVED, SIGNED AND ADOPTED by the Board of Directors in a regular meeting conducted on October 22, 2014 in the City of Gallup, by a vote of __ in favor, __ opposed and __ abstaining.

SIGNED: _____

Billy Moore, Chairman of the Board

ATTEST: _____

Jeffrey G. Kiely, Board Secretary/Executive Director

**PROPOSED
NEW MEXICO INVESTMENT TAX CREDIT PROGRAM
(NMITCP)**

Purposes:

1. **Stimulus:** To stimulate economic development by providing a near-cash incentive to manufacturers, processors and the oil and gas industry that can be easily monetized to help satisfy financial institution requirements for equity.
2. **Investment:** To encourage private investment in manufacturing facilities within New Mexico.
3. **Competitive Advantage:** To differentiate New Mexico's communities from its competition among other states for industry.
4. **Jobs:** To accelerate job creation.

Mechanism:

- A. A State of New Mexico Investment Tax Credit (ITC) may be earned by manufacturers, processors and the oil and gas industry for investment in land, buildings and other fixed assets. This incentive is targeted primarily to stimulate investment in buildings and other permanent assets which are functionally related and subordinate to the investment in a building or affixed to the permanent structure.

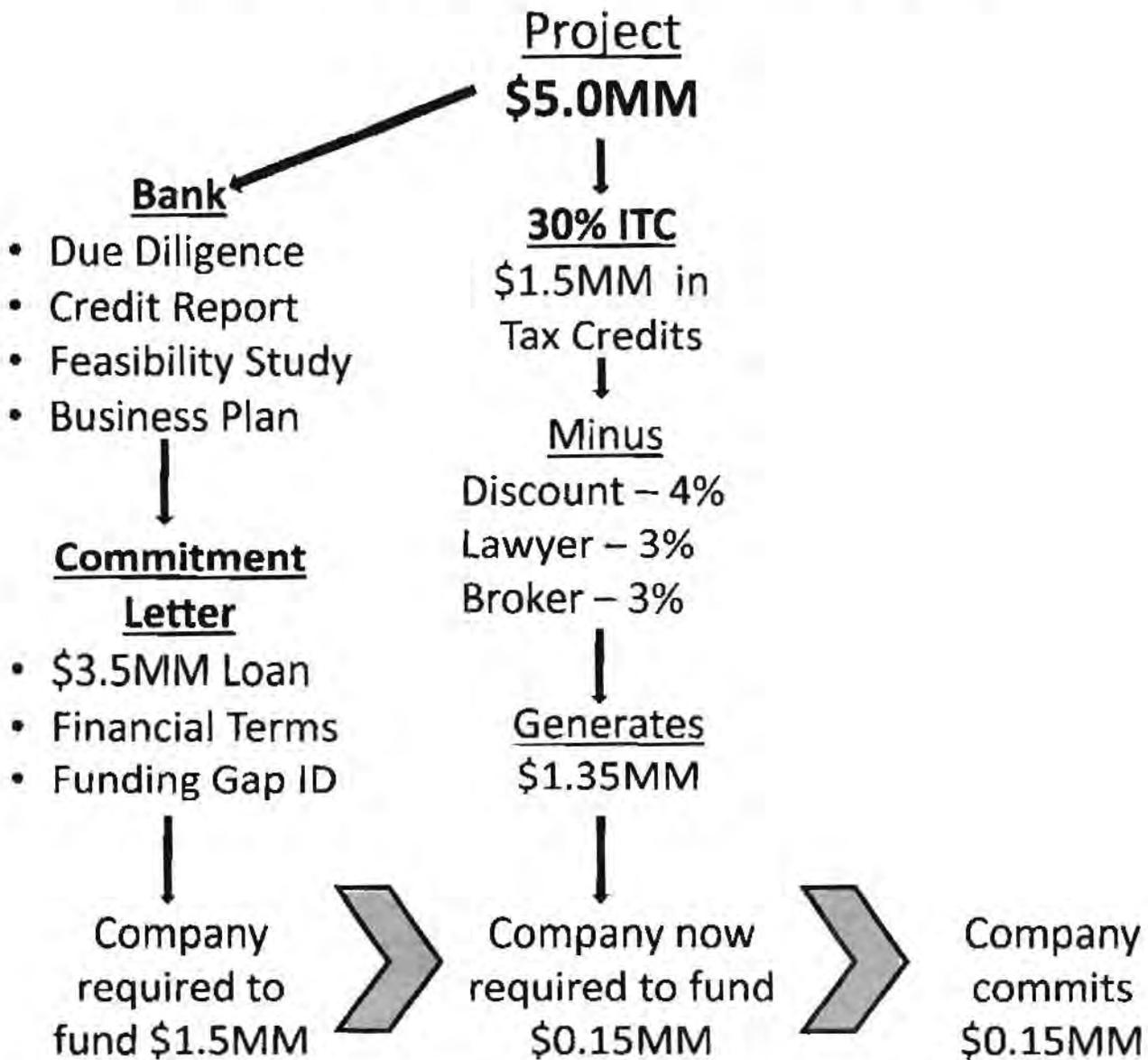
Therefore, credits earned for investment in non-building fixed improvements (land, rails spur, fixed equipment, access roads, signaling and other fixed improvements) shall not exceed the total of credits earned by investment in the structure or structures (buildings).

- B. The Investment Tax Credit (ITC) shall be redeemable against New Mexico State Tax Liabilities of 20% of eligible investment in urban areas and 30% of eligible investment in rural areas.
- C. **Minimum Threshold for Investment and Program Cap:**
- 1) The State of New Mexico shall provide an allocation of \$200,000,000 each year for the New Mexico Investment Tax Credit Program; such allocation shall be on a first-come-first serve basis and shall be administered by the New Mexico Tax Commission.
 - 2) A minimum threshold investment of \$1,000,000 and a maximum award of ITC are regardless of investment of \$15 million.
 - 3) A minimum job creation of 1 job created and maintained for each \$100,000 in tax credit award.
 - 4) The award of credits under the program shall be limited to (1) award per project; a project that is functionally related or subordinate to an already awarded project shall not be eligible.
 - 5) Multiple projects with common ownership located in multiple geographic areas shall be limited to a maximum award of \$45 million.
- D. The New Mexico Investment Tax Credits are fully transferable, carry forward until used and may be used to pay any taxes of the State of New Mexico.

Administration and Audit:

- ✓ The Credit shall be created upon loan closing for a qualifying purpose at a New Mexico State or New Mexico Nationally Chartered Financial Institution. At loan closing a notice shall be provided to the New Mexico Tax Commission; The New Mexico Tax Commission will then issue an Allocation and Determination Letter Identifying the Project and amount of tax credits. The Project must be completed within 12-months or have request additional time from the New Mexico Tax Commission, which may be extended in 6-months intervals providing meaningful and measurable progress is being made toward project completion. When a project is complete and a certificate of occupancy or other evidence of completion is obtained and delivered to the New Mexico Tax Commission then the NMITCP Credits are deemed to be earned.
- ✓ A project shall be subject to audit for 3-years by the New Mexico Tax Commission and credits may be disallowed if they did not meet program requirements.
- ✓ In the case of an audit where a project is deemed to not meet the applicable requirements of the Program then the taxes paid with NMITCP Credits (the credits) are deemed not paid and will be the responsibility of the tax payer along with applicable penalty and interest thereon.

Investment Tax Credit



Sources & Uses

Bank Loan	\$3.50MM
Proceeds from sale of ITC	\$1.35MM
Injection of Cash	\$0.15MM
TOTAL	\$5.0MM

Staff Summary Report

MEETING DATE:	December 18, 2014
AGENDA ITEM:	XI. Business Item (A)
AGENDA TITLE:	Adopt Ordinance 2014-441 Amending Ordinance 2013-423 Authorizing City of Aztec New Mexico Loan Agreement with New Mexico Environment Department Clean Water State Revolving Fund, Wastewater Interceptor Line

ACTION REQUESTED BY:	FINANCE DEPARTMENT
ACTION REQUESTED:	Adopt Ordinance 2014-441 Amending Ordinance 2013-423
SUMMARY BY:	Kathy Lamb

PROJECT DESCRIPTION / FACTS

Intent to Adopt Ordinance 2014-441 was approved by City Commission 11/25/14.

Public Hearing on the Ordinance was held 12/9/14. Mr. Jim Crowley spoke during the hearing voicing concerns on potential rate increase which will be required the result of the debt and requested City Commission to consider the possibility of the use of cash reserves to reduce the amount of debt once the project is complete. No further comments have been received as of December 15, 2014.

Loan Ordinance

Additional loan funds in the amount of \$1,450,436 have been authorized by NMED requiring an ordinance amending the original for the new amount of \$5,050,000. Terms of the additional funding remain the same as the original amount (20 years @ 3%). Changes between the original ordinance and the amended ordinance are in red.

Total funding available through the NMED CWSRF loan includes:

\$5,050,000 loan proceeds, 3% @ 20yrs
\$ 350,000 loan subsidy (grant)
\$5,400,000 total funding package

Debt Reserve requirement is equal to one annual payment, estimated to be \$339,440 and Repair & Replacement Reserve equal to 5% of final loan, estimated to be \$252,500; both which are required to be funded within six years of final loan agreement.

The first debt payment on the loan will be due one year after full reimbursement of the loan funds or completion of the project.

The loan may be prepaid at any time.

The loan is secured by net system revenues of the Joint Utility Fund. Net system revenues are defined as gross revenues less operation and maintenance expenses, debt obligations, approved indirect charges, capital replacements and repair of the system and required set asides for the debt service reserve requirement and replacement reserve requirement.

Both NMED and City Attorney have reviewed the ordinance and found to be legally sufficient for the intended purpose.

Project Schedule (updated since 12/9/14)

Project Advertises	January 2015
Pre-Bid	February 2015
Bid Opening	March, 2015
Award (Tentative)	March, 2015
Notice to Proceed	April 2015
Construction Time	6 – 9 months (estimate)

FISCAL INPUT

Utility rates, specifically wastewater, will require review during the year to ensure sufficient revenues to meet the loan requirements.

SUPPORT DOCUMENTS: Ordinance 2014-441 NMED CWSRF Loan

DEPARTMENT'S RECOMMENDED MOTION: Adopt Ordinance 2014-441 Amending Ordinance 2013-423 Authorizing City of Aztec New Mexico Loan Agreement with New Mexico Environment Department Clean Water State Revolving Fund, Wastewater Interceptor Line

CITY OF AZTEC, NEW MEXICO

ORDINANCE NO. 2014-441

AUTHORIZING THE CITY OF AZTEC, NEW MEXICO (CITY) TO ENTER INTO **AN AMENDED** LOAN AGREEMENT WITH THE NEW MEXICO ENVIRONMENT DEPARTMENT FOR THE PURPOSE OF OBTAINING ADDITIONAL WASTEWATER CONSTRUCTION LOAN FUNDS IN THE PRINCIPAL AMOUNT OF **\$1,450,436.00, FOR A TOTAL LOAN AMOUNT NOT TO EXCEED \$5,050,000** PLUS ACCRUED CONSTRUCTION INTEREST,; DESIGNATING THE USE OF THE LOAN FUNDS FOR THE PURPOSE OF ACQUIRING, CONSTRUCTING, MODIFYING AND OTHERWISE IMPROVING THE WASTEWATER FACILITIES OF THE CITY'S JOINT UTILITY SYSTEM; DECLARING THE NECESSITY FOR THE LOAN; PROVIDING THAT THE LOAN WILL BE PAYABLE AND COLLECTIBLE SOLELY FROM THE NET SYSTEM REVENUES TO BE DERIVED FROM THE OPERATION OF THE CITY'S JOINT UTILITY SYSTEM; PRESCRIBING OTHER DETAILS CONCERNING THE LOAN AND THE SECURITY THEREFOR.

If not otherwise defined in these recitals, capitalized terms used herein shall have the meanings given them in Section 1 of this Ordinance.

WHEREAS, the City is a legally and regularly created public body, organized under the general laws of the State; and

WHEREAS, the City now owns, operates and maintains a joint public utility constituting a joint water, wastewater (i.e., sanitary sewer) and electric system (the "System"), which includes a system for disposing of wastes by surface and underground methods; and

WHEREAS, the present System is insufficient and inadequate to meet the needs of the City and its residents for the treatment and disposal of wastewater; and

WHEREAS, the Loan Agreement and Note will be payable solely from Net System Revenues; and

WHEREAS, the funds for this project will include funds from a one-time federal grant to the NMED from the Environmental Protection Agency; and

WHEREAS, the Project is subject to specific requirements of the federal grant; and

WHEREAS, the City has the following obligations to which Net System Revenues have already been pledged; and

WHEREAS, pursuant to City Ordinance No. 2008-353, duly adopted and approved on October 21, 2008, the City entered into a Loan Agreement, Loan No. CWSRF009 with the New Mexico Environment Department("NMED") dated February 3, 2010 ("2008 NMED Loan Agreement"); and

WHEREAS, pursuant to City Ordinance No. 2013-423, duly adopted and approved on June 10, 2013, the City entered into an Interim Loan Agreement, Loan No. CWSRF 021 with the New Mexico Environment Department ("NMED") dated June 24, 2013 ("2013 NMED Interim Loan Agreement"); and

WHEREAS, except as stated above and with respect to obligations relating to such bonds and other obligations, the Net System Revenues have not been pledged to the payment of any outstanding obligations and no other obligations are payable from the Net System Revenues on the date of this Ordinance; and

WHEREAS, the Commission has determined that it is necessary and in the best interest of the City to accept and enter into the Loan Agreement and to execute and to deliver the Note to the NMED (as defined herein).

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF AZTEC:

Section 1. DEFINITIONS. As used in this Ordinance, the following terms shall, for all purposes, have the meanings specified below, unless the context clearly requires otherwise (such meanings to be equally applicable to both the singular and the plural forms of the terms defined unless the plural form is separately defined);

2008 NMED Loan Agreement.TheLoan Agreement with the NMED dated February 3, 2010.

2013 NMED Interim Loan Agreement. The Interim Loan Agreement with the NMED dated June 24, 2013.

ACT.The general laws of the State, including the Wastewater Facility Construction Loan Act at sections 74-6A-1 to 74-6A-15 NMSA 1978, as amended; enactments of the Council relating to the Note and the Loan Agreement made by resolution or ordinance, including this Ordinance; and the powers of the City as a public body under authority given by the Constitution and Statutes of the State.

ADMINISTRATIVE FEE. A fee assessed and collected by the NMED from the Cityon each loan and expressed as a percentage per year on the outstanding principal amount of the loan, payable by the Cityon the same date that principal and interest on the loan are due, for deposit in the Clean Water Administrative Fund;

ANNUAL AUDIT or SINGLE AUDIT. Financial statements of the City as of the end of each Fiscal Year, audited by an Independent Accountant, consistent with the federal Single Audit Act and the State Auditor's rules.

ANNUAL LOAN REPAYMENT ACCOUNT. An account established under this Ordinance and held by the City, funded from the Net System Revenues in the amount necessary for payment of the principal, interest and administrative fees due annually under the Loan Agreement and Note.

AUTHORIZED OFFICER. The City's Mayor, Manager, Finance Director, or other officer or employee of the City as designated by City Resolution Number 2013-915 approved by the governing body of the City, as amended.

CITY. The entity requesting funds pursuant to the Act.

COMMISSION. The governing body of the City.

DEBT SERVICE RESERVE ACCOUNT. The account established under this Ordinance and held by the City as required pursuant to the Note, funded from Net System Revenues in the amount of the Debt Service Reserve Requirement.

DEBT SERVICE RESERVE REQUIREMENT. An amount equal to one annual repayment of principal, interest and administrative fees due pursuant to the Note.

FISCAL YEAR. The twelve-month period commencing on the first day of July of each year and ending on the last day of June of the next succeeding year, or any other twelve-month period which the City or other appropriate authority hereafter may establish as the fiscal year for the System.

GROSS REVENUES. All income and revenues directly or indirectly derived by the City from the operation and use of the System.

HEREIN, HEREBY, HEREUNDER, HEREOF, HEREINBEFORE and HEREAFTER. Refer to this Ordinance generally and not solely to the particular portion of this Ordinance in which such word is used.

JOINT UTILITY O&M FUND. The fund established under this Ordinance for deposit of the Gross Revenues of the System.

JOINT UTILITY SYSTEM OR SYSTEM. The City's municipally owned public utility designated as the City's joint utility system, consisting of water, wastewater and electric facilities.

LOAN. The loan of funds from NMED made pursuant to the Loan Agreement.

LOAN AGREEMENT. One or more loan agreements in the form attached to the Ordinance as Exhibit A, and in the form of the amended loan agreement which shall amend Exhibit A to state the exact amount the NMED loaned to the City, and which shall be executed upon completion of the Project, to be dated on the date of execution thereof between the City and the NMED pursuant to which funds will be loaned to the City to construct the Project and pay eligible costs relating thereto, as amended from time to time.

LOAN SUBSIDY GRANT. A sub-grant of funds to the City from a one-time federal grant of funds to the NMED by EPA, for the purpose of subsidizing the amount loaned to the City under the Loan Agreement and Note.

NET SYSTEM REVENUES. Gross Revenues LESS the following expenses: (1) Operation and Maintenance expenses of the System, (2) Parity Bonds or Parity Obligations (3) approved indirect charges, (4) any amounts expended for capital replacements and repair of System, and (5) the required set asides for Debt Service Reserve Requirement and Replacement Reserve Requirement.

NMED.The New Mexico Environment Department, successor to the Environmental Improvement Division of the New Mexico Health and Environment Department and any assignee of the NMED pursuant to the Loan Agreement and Note, or its successor agency as provided by law.

NMSA.New Mexico Statutes Annotated, 1978 Compilation as amended and supplemented.

NOTE.The interim and final promissory notes in the forms attached to the Loan Agreement as Exhibit B, attached hereto issued by the City to the NMED, evidencing the indebtedness of the City to the NMED incurred pursuant to the Ordinance and Loan Agreement.

OPERATION AND MAINTENANCE. All reasonable and necessary current expenses of the System, paid or accrued, relating to operating, maintaining and repairing the System.

ORDINANCE.This Ordinance as amended or supplemented from time to time.

PARITY OBLIGATIONS. The Loan Agreement and Note, the 2008 NMED Loan Agreement, **2013 NMED Interim Loan Agreement** and other bonds or other obligations payable from Net System Revenues of the System issued with a lien on the Net System Revenues on parity with the lien thereon of the Loan Agreement and Note, hereafter issued with the prior written consent of the NMED.

PROJECT. Wastewater collection and treatment system upgrades approved by the NMED.

PROJECT COMPLETION DATE. The date that operations of the completed works are initiated or capable of being initiated, whichever is earlier. This also applies to individual phases or segments.

REGULATIONS. Regulations promulgated by the Water Quality Control Commission Regulations at 20.7.5 NMAC and New Mexico Environment Department at 20.7.6 - 20.7.7 NMAC.

REPLACEMENT RESERVE ACCOUNT. The account established under this Ordinance and held by the City, to be funded from Net System Revenues in the amount of the Replacement Reserve Requirement.

REPLACEMENT RESERVE REQUIREMENT. An amount to be funded by the City in an annual deposit of one-sixth of 5% of the sum of the final principal amount loaned and the amount of the loan subsidy granted to the City from NMED.

STATE. The State of New Mexico.

Section 2. RATIFICATION. All action heretofore taken (not inconsistent with the provisions of this Ordinance) by the Commission, the officers and employees of the City, directed toward the Loan Agreement and the Note, is hereby ratified, approved and confirmed.

Section 3. FINDINGS. The Commission hereby declares that it has considered all necessary and relevant information and data and hereby makes the following findings:

A. The execution and delivery of the Loan Agreement and the Note pursuant to the Act to provide funds to finance the Project, is necessary and in the interest of the public health, safety and welfare of the residents of the City and will result in savings of debt service costs to the City.

B. The City will acquire, improve and finance the Project.

C. The money available for the Project from all sources other than the Loan Agreement is not sufficient to pay when due the cost of the Project.

D. The Project is and will be part of the System, which is a publicly owned water, wastewater and electric system the purposes of which include the disposal and treatment of wastewater, either by surface or underground methods.

E. The Net System Revenues may lawfully be pledged to secure the payment of amounts due under the Loan Agreement and Note.

Section 4. JOINT UTILITY. The municipal water, wastewater and electric facilities shall continue to constitute a joint utility (i.e., the System) and shall be operated and maintained as such.

Section 5. AUTHORIZATION OF PROJECT. The acquisition and construction of the Project and payment of eligible items as set forth in the Regulations from proceeds of the Loan Agreement and Note are hereby authorized at a cost not to exceed the principal amount of **\$5,050,000.00** excluding any cost of the Project to be paid from any source other than the proceeds of the Loan Agreement and Note.

Section 6. AUTHORIZATION OF LOAN AGREEMENT.

A. For the purpose of protecting the public health, conserving the property, protecting the general welfare and prosperity of the citizens of the City and acquiring the Project, it is hereby declared necessary that the City, pursuant to the Act and the Regulations execute and deliver, and the City is hereby authorized to execute and deliver, the Loan Agreement and the Note as Parity Obligations to be payable and collectible solely from the Net System Revenues. The NMED has agreed to disburse the proceeds according to the terms of the Loan Agreement to the City over the construction period of the Project. The aggregate principal amount of the Note shall not exceed \$5,050,000.00 plus accrued construction interest without the adoption of another Ordinance amending the Ordinance by the Commission, and the annual interest rate and

administrative fees on that principal amount shall not exceed three (3%) percent per annum collectively. Interest and the Administrative Fee shall be computed as a percentage per year on the outstanding principal amount on the Loan on the basis of a 365 day year, actual number of days lapsed. The final maturity date on the Note shall not extend beyond 20 years from the Project Completion Date. The Loan shall be repaid in substantially equal annual installments of principal, interest and administrative fees on the dates provided in the Loan Agreement, with the first annual installment due within one year of the Project Completion Date, but no later than one year after the date of the warrant of final payment from the NMED. The City must obtain the written consent of the NMED before issuing additional obligations secured by Net System Revenues. The NMED has given its written consent allowing the City to issue and incur the obligation to be evidenced by the Loan Agreement and the Note.

B. The City is hereby authorized to accept a Loan Grant Subsidy under the terms of the Loan Agreement. The aggregate Loan Grant Subsidy amount shall not exceed \$350,000 without the adoption of another Ordinance amending the Ordinance by the Commission. By accepting a Loan Grant Subsidy, the City is a sub-recipient of a one-time federal grant of funds to NMED by EPA. As a sub-recipient, the City is responsible for complying with the specific requirements and the conditions of the one-time federal grant. If the City fails to satisfy any federal grant requirements or conditions, the City may be required to refund any federal grant funds disbursed to the City from NMED. Specific federal grant requirements include but are not limited to:

- (1) Federal Grant Reporting Requirements; and
- (2) Wage Rate Requirements

C. The form of the Loan Agreement and the Note are approved. An Authorized Officer is hereby authorized and directed to execute and deliver the Loan Agreement and the Note, and any extensions of or amendments to any such documents to be executed after completion of the Project, or any substitution therefore, substantially in the forms attached hereto as Exhibits A and B with such changes therein as are not inconsistent with this Ordinance and as shall be approved by an Authorized Officer whose execution thereof, or any extension thereof, or substitution therefore, in their final forms shall constitute conclusive evidence of their approval and compliance with this Section.

D. From and after the date of the initial execution and delivery of the Loan Agreement and the Note, Authorized Officers, agents and employees of the City are authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of this Ordinance, the Loan Agreement and the Note.

Section 7. SPECIAL LIMITED OBLIGATIONS. The Loan Agreement and the Note and all payments of principal, interest and administrative fees thereon shall be special limited, and not general, obligations of the City and shall be payable and collectible solely from the Net System Revenues which are irrevocably pledged (but not exclusively pledged) as set forth in Section 5 and 6 of this Ordinance. The NMED may not look to any general or other municipal fund for the payment of the principal, interest or administrative fees on the Loan Agreement and the Note except the designated special funds pledged therefore. The Loan Agreement and the Note shall not constitute indebtedness or debts within the meaning of any constitutional or statutory provision or limitation, nor shall they be considered or be held to be general obligations of the City and shall recite that they are payable and collectible solely out of

the Net System Revenues, the income from which is so pledged, and that the NMED may not look to any general or other municipal fund for the payment of the principal, interest or the administrative fees on the Loan Agreement or the Note.

Section 8. OPERATION OF PROJECT. The City will operate and maintain the Project so that it will function properly over its structural and material design life, which is not less than 20 years.

Section 9. USE OF PROCEEDS. The NMED shall disburse Funds pursuant to the Loan Agreement for NMED approved costs incurred by the City for the Project or to pay contractors or suppliers of materials for work performed on the Project as set forth in the Loan Agreement.

Section 10. JOINT UTILITY O&M FUND. So long as the Loan Agreement and the Note are outstanding, whether as to principal, interest or administrative fees, all Gross Revenues shall continue to be set aside and credited to the Joint Utility O&M Fund.

Section 11. DEBT SERVICE, REPLACEMENT RESERVE, AND ANNUAL LOAN REPAYMENT ACCOUNTS.

A. DEBT SERVICE RESERVE ACCOUNT. A Debt Service Reserve Account is established under this Ordinance, held by the City and funded from the Net System Revenues in the amount of the Debt Service Reserve Requirement. The City shall deposit no less than one-sixth of the amount of one annual repayment of principal, interest and the administrative fees from the Joint Utility O&M Fund into this account in each 12-month period beginning at final loan closing and continuing until the full amount of the Debt Service Reserve Requirement is on deposit in the Debt Service Reserve Account. In the event that funds from the Debt Service Reserve Account are used to service the Loan Agreement and the Note, the City shall replenish

the Debt Service Reserve Account as soon as possible by depositing funds in the manner described above until the full amount of the Debt Service Reserve Requirement is on deposit in the Debt Service Reserve Account. So long as the Loan Agreement and the Note are outstanding, whether as to principal, interest, or the administrative fee the City shall fund the Debt Service Reserve Account and identify this in the Annual Audit.

B. REPLACEMENT RESERVE ACCOUNT. A Replacement Reserve Account is established under this Ordinance, held by the City and funded from the Net System Revenues in the amount of the Replacement Reserve Requirement. The City shall deposit no less than one-sixth of 5% of the sum of the final principal amount loaned and the amount of the loan subsidy granted to the City from the Joint Utility O&M Fund into this account in each 12-month period beginning at final loan closing and continuing until the full amount of the Replacement Reserve Requirement is on deposit. The Replacement Reserve Account shall accumulate funds to pay for replacement of parts to ensure the Project is fully operational during the term of the Loan Agreement and Note. In the event that funds from the Replacement Reserve Account are used to pay for replacement of parts, the City shall replenish the Replacement Reserve Account as soon as possible by depositing funds in the manner described above until the full amount of the Replacement Reserve Requirement is on deposit in the Replacement Reserve Account. So long as the Loan Agreement and the Note are outstanding, whether as to principal, interest, or the administrative fee, the City shall fund the Replacement Reserve Account and identify this in the Annual Audit.

C. ANNUAL LOAN REPAYMENT ACCOUNT. An Annual Loan Repayment Account is established under this Ordinance, held by the City and funded from the Net System Revenues in the amount necessary for payment of the principal, interest and the administrative

fee due annually under the Loan Agreement and Note. So long as the Loan Agreement and the Note are outstanding, whether as to principal, interest, or the administrative fee, the City shall fund the Annual Loan Repayment Account and identify this in the Annual Audit.

Section 12. APPLICATION OF GROSS REVENUES.

A. **OPERATION AND MAINTENANCE.** The City shall pay for the operation and maintenance expenses of the System, approved indirect charges, and any amounts for capital replacement and repair of the System from the Joint Utility O&M Fund as incurred.

B. **PARITY OBLIGATIONS AND OTHER APPROVED DEBTS.** The City shall pay principal, interest and administrative fees of parity obligations and other approved debts which are secured from the Net System Revenues of the Joint Utility O&M Fund as scheduled.

C. **EQUITABLE AND RATABLE DISTRIBUTION.** Obligations of the city secured by Net System Revenues on a parity with the Loan Agreement and Note, from time to time outstanding, shall not be entitled to any priority one over the other in the application of the Net System Revenues, regardless of the time or times of their issuance or creation.

D. **DEBT SERVICE AND REPLACEMENT RESERVE ACCOUNTS.** The City shall deduct the required amounts for debt service reserve and replacement reserve accounts from the Joint Utility O&M Fund as required.

E. **SUBORDINATE OBLIGATIONS.** Net System Revenues used for the payment of Subordinate Obligations shall be applied first to the payment of the amounts due the Loan Agreement and the Note, including payments to be made to other obligations payable from Net System Revenues which have a lien on Net System Revenues on parity with the Loan Agreement and the Note.

Section 13. LIEN OF LOAN AGREEMENT AND NOTE.The Loan Agreement and the Note shall constitute irrevocable liens upon the Net System Revenues with priorities on the Net System Revenues as set forth in Section 12 of the Ordinance. The City hereby pledges and grants a security interest in the Net System Revenues for the payment of the Note and any other amounts owed by the City to the NMED pursuant to the Loan Agreement.

Section 14. OTHER OBLIGATIONS. Nothing in this Ordinance shall be construed to prevent the City from issuing bonds or other obligations payable from the Net System Revenues and having a lien thereon subordinate to the liens of the Loan Agreement and the Note. For all other obligations, the City shall first obtain the prior written consent of the NMED prior to issuing such other obligations.

Section 15. DEFAULT.The following shall constitute an event of default under the Agreement:

A. The failure by the City to pay the principal, interest and administrative fees on the repayment of the Loan set forth in the Loan Agreement and Note when due and payable either at maturity or otherwise; or

B. Default by the City in any of its covenants or conditions set forth under the Loan Agreement (other than a default described in the previous clause of this section) for 60 days after the NMED has given written notice to the City specifying such default and requiring the same to be remedied.

UPON OCCURRENCE OF DEFAULT:

A. The entire unpaid principal amount of the Final Promissory Note plus accrued interest and administrative fees thereon may be declared by the NMED to be immediately due and payable and the City shall pay the amounts due under Note from the Net System Revenues,

either immediately or in the manner required by the NMED in its declaration, but only to the extent Net System Revenues are available for payment of the Note(s). However, if insufficient funds are available for payment of the Note(s), the NMED may require the City to adjust the rates charged by the System to ensure repayment of the Note.

B. If default by the City is of covenants for conditions required under the federal grant, the City may be required to refund the amount of the Loan Subsidy Grant disbursed to the City from NMED.

C. The NMED shall have no further obligation to make payments to the City under the Loan Agreement.

Section 16. ENFORCEMENT; VENUE.The NMED retains the right to seek enforcement of the terms of the Loan Agreement. If the NMED and the City cannot reach agreement regarding disputes as to the terms and conditions of the Loan Agreement, such disputes are to be resolved promptly and expeditiously in the district court of Santa Fe County. The City agrees that the district court for Santa Fe County shall have exclusive jurisdiction over the City and the subject matter of the Loan Agreement and waives the right to challenge such jurisdiction.

Section 17. REMEDIES UPON DEFAULT.Upon the occurrence of any of the events of default as provided in the Loan Agreement (to the extent consistent with this Ordinance) or in Section 15 of this Ordinance, the NMED may proceed against the City to protect and enforce its rights under this Ordinance by mandamus or other suit, action or special proceedings in equity or at law, in any court of competent jurisdiction, either for the appointment of a receiver or for the specific performance of any covenant or agreement contained in this Ordinance for the enforcement of any proper legal or equitable remedy as the NMED may deem most effective to

protect and enforce the rights provided above, or to enjoin any act or thing which may be unlawful or in violation of any right of the NMED in this Ordinance or the Loan Agreement or to require the City to act as if it were the trustee of an express trust, or any combination of such remedies. Each right or privilege of the NMED shall be in addition and cumulative to any other right or privilege under this Ordinance or the Loan Agreement and Note and the exercise of any right or privilege by the NMED shall not be deemed a waiver of any other right or privilege.

Section 18. DUTIES UPON DEFAULT. Upon the occurrence of any of the events of default as provided in Section 15 of this Ordinance, the City, in addition, will do and perform all proper acts on behalf of and for the NMED to protect and preserve the security created for the payment of the Note to ensure the payment of the principal, interest and administrative fees on the Note promptly as the same become due. All proceeds derived from the System, so long as the Note is outstanding, shall be treated as revenues. If the City fails or refuses to proceed as required by this Section, the NMED, after demand in writing, may proceed to protect and enforce the rights of the NMED as provided in this Ordinance and the Loan Agreement.

Section 19. TERMINATION. When all obligations under the Note and Loan Agreement have been paid, the Loan Agreement and Note shall terminate and the pledge, lien, and all other obligations of the City under this Ordinance shall be discharged. The principal amount of the Note, or any part thereof, may be prepaid at any time without penalty at the discretion of the City and the prepayments of principal shall be applied as set forth in the Loan Agreement.

Section 20. AMENDMENT OF ORDINANCE. This Ordinance may be amended with the prior written consent of the NMED, which consent shall not be unreasonably refused.

Section 21. ORDINANCE IRREPEALABLE.After the Loan Agreement and the Note have been executed and delivered, this Ordinance shall be and remain irrepealable until the Note has been fully paid, terminatedand discharged, as provided in this Ordinance.

Section 22. SEVERABILITY CLAUSE. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of the Ordinance.

Section 23. REPEALER CLAUSE.All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency.This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof heretofore repealed.

Section 25. EFFECTIVE DATE.Upon the due adoption of this Ordinance, it shall be recorded in the book of ordinances of the City kept for that purpose, authenticated by the signature of the Mayor and City Clerk, and the seal of the City impressed hereon, and the title and general summary of the subject matter contained in this Ordinance shall be published in a newspaper which maintains an office and is of general circulation in the City. This Ordinance shall be in full force and effect after its publication and adoption in accordance with law.

ADOPTED THIS ____ DAY OF _____, 2014

CITY OF AZTEC, NEW MEXICO

Mayor

ATTEST:

City Clerk

[SEAL]

STATE OF NEW MEXICO)

) ss.

COUNTY OF SAN JUAN)

I, Karla Saylor, City Clerk of the City of Aztec, New Mexico, do hereby certify:

1. The foregoing copy of Ordinance No. _____ is a full, true and correct copy of the original of that ordinance as passed by the City Commission at its regular meeting held on _____, 2014, and the original ordinance has been duly authenticated by the signatures of the Mayor of the City and the City Clerk on that date, sealed with the corporate seal.

2. ____ (__) members of the City Commission were present at that meeting, and ____ (__) members of the City Commission voted in favor of passage of that Ordinance.

3. Notice of the _____, 2014 meeting of the City Commission was duly given as required by the Open Meetings Act, Sections 10-15-1 through 4, NMSA 1978 and Resolution No. 2014-932 which is the current resolution of the City which establishes the reasonable notice policy of the City as required by the Open Meetings Act.

4. On _____, 2014, a Notice of Public Hearing on Ordinance No. __ was published in the Farmington Daily Times, a newspaper which maintains an office in and is of general circulation within the City. A true and correct copy of the affidavit of publication of the Notice of Public Hearing is attached hereto as Exhibit C.

5. On _____, 2014, a Notice of Adoption of Ordinance No. _____, was published by title and summary of its subject matter in the Farmington Daily Times, a newspaper which maintains an office in and is of general circulation within the City. A true and

correct copy of the affidavit of publication of the Notice of Adoption is attached hereto as Exhibit D.

6. No other business concerning that Ordinance was taken at that meeting.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the City of Aztec,
New Mexico this _____, day of _____, 2014.

CITY CLERK

(SEAL)